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SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			TAWFIK, SAMEH	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/695,716

Filing Date: October 29, 2003

Appellant(s): MILLER, ANNE LOUISE

**F MAILED**

**SEP 05 2007**

**Group 3700**

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Barbara Clark  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 07/13/2007 appealing from the Office action mailed 12/13/2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,378,066

Wade

01/1995

3,873,735

Chalin et al.

03/1975

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

*Claim Rejections - 35 USC § 103*

Claims 11-49 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Wade (U.S. Patent No. 5,378,066) in view of Chalin et al. (U.S. Patent No. 3,873,735).

Wade discloses a method for providing an enhanced opening system for a sealed container comprising: providing a bag having lines of weakness (Figs. 19-20D) and a pull-tab opener secured to the bag proximate to the lines of weakness (Figs. 19-20D; via 410), the pull-tab opener having a pull-tab opening integral therewith, wherein the pull-tab opening is a hole large enough to be hooked with hooking means (Figs. 19-20D; via through opening/hole 420) and pulled on to open the sealed container without utilizing a pinch force (note that the hole 420 seems large enough to be hooked with hooking means via the thumb as described in column 13, lines 17-24).

Wade does not disclose the step of providing suitable markings to convey instructions to the pull on the pull-tab opener to access the contents within the sealed container without utilizing a pinch force, wherein the sealed container is adapted to be opened easily with the pull tab opener by a person who follows the instructions conveyed by the markings.

However, Chalin discloses a similar method for providing an opening system for container comprising the step of providing suitable markings via words to convey instructions to pull on the pull-tab opener to access the package contents without utilizing a pinch force, wherein the package is adapted to be opened easily by a person who follows the instructions

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conveyed by the markings (Figs. 26-28; via the printed instructions on the bag explaining how to open such bag through opening hole 824).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Wade's method by having the step of providing suitable markings to convey instructions to pull on the pull tab opener to access package contents, as suggested by Chalin, in order to make it easy and simple opening and handling such containers (column 3, lines 39-41).

Regarding claims 13, 14, 16, 39, and 40: Wade discloses that the pull-tab opener is a reusable pull-tab opener with reusable securing means (Figs. 16-20D; via peal off glue 411).

Regarding claim 22: Wade discloses that the package contents comprise at least one product disposed within the sealed container, (Figs. 19-20D; via 402).

Regarding claims 23-25: Wade does not disclose that the product is a disposable absorbent garment, selected from diaper, training pants, adult incontinence garment and feminine napkin.

However, the examiner takes an official notice that packaging such product such as disposable absorbent garment, selected from diaper, training pants, adult incontinence garment and feminine napkin in bag is old, well known, and available in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Wade in view of Chalin's method by inserting any of disposable absorbent garment, selected from diaper, training pants, adult incontinence garment and feminine napkin in the bag, as a matter of engineering design choice, specially Wade's bag is capable of packaging such articles.

Regarding claim 26: it is inherent that Wade's package is capable of containing articles of different types and sizes.

Regarding claim 27: Wade discloses that the bag and pull-tab opener are made from a polymeric plastic film, paper or paper composite and pull-tab opening is a finger sized opening (Figs. 19-20D and column 8, lines 39-50).

Regarding claim 28: Wade discloses that the hooking means comprises one to three fingers or an object, the object having a maximum diameter not greater than about eight cm, (Figs. 19-20D; via holes 420).

Regarding claim 29: Wade discloses that the lines of weakness are torn and an opening is created when the pull-tab opener is pulled (Figs. 20A-20D).

Regarding claim 30: Wade discloses that the package contents (402) are oriented proximate to the opening to facilitate easy removal.

Regarding claims 19 and 31: Wade discloses that wherein at least a portion of the lines of weakness form a V-shape having a perforation junction or a U-shape (Fig. 19; via 412 and 414), wherein the U-shape has two substantially parallel lines of perforations and a slit or third line of perforations located substantially perpendicular to and in between the two substantially parallel lines of perforations at one end (Fig. 19).

Regarding claim 32: Wade discloses that the portion of the lines of weakness form the V-shape (Fig. 19; via upper portion of 414 in V-shape).

Regarding claim 33: Wade discloses that a portion of the lines of weakness form the U-shape and the reusable pull-tab opener covers the two substantially parallel line of perforations (Fig. 9; via 412).

Regarding claims 17 and 34: Wade discloses that the package is comprised of six panels arranged in a rectangular configuration and the substantially parallel lines of perforations extend across a portion of two adjacent panels, see for example (Figs. 19-20D).

Regarding claims 18 and 35: Wade discloses that the package is comprised of six panels arranged in a rectangular configuration and the substantially parallel lines of perforations are contained on a single panel, see for example (Figs. 19-20D).

Regarding claims 41-49: Wade as modified by Chalin disclose that the hole is not greater than about 15 cm in length or width; is not greater than about 7.6 cm in at least one of length or width; is not less than about 1.3 cm in at least one of length or width; and is not greater than about 15 cm in at least one of length or width, see for example (Fig. 19).

## **(10) Response to Argument**

### **A. Examiner interpretation of the independent claims**

During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). See also MPEP 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. In re

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Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). See also MPEP 2111.01.

*Independent claim 11 recites:*

A method of providing an enhanced opening system for a sealed container comprising:  
providing a bag having lines of weakness and a pull-tab opener secured to the bag proximate to the lines of weakness, the pull-tab opener having a pull-tab opening integral therewith, wherein the pull-tab opening is a hole large enough to be hooked with hooking means and pulled on to open the sealed container without utilizing a pinch force; and

providing suitable markings to convey instructions to pull on the pull-tab opener to access contents within the sealed container without utilizing a pinch force, wherein the sealed container is adapted to be opened easily with the pull-tab opener by a person who follows the instructions conveyed by the markings.

*Independent claim 15 recites:*

A method of providing an enhanced product removal system for a sealed container comprising:

providing a sealed container having lines of weakness;

providing at least one product disposed within the sealed container; and

providing a pull-tab opener secured to the sealed container proximate to the lines of weakness, wherein the pull-tab opener has a pull-tab opening configured as a hole large enough to allow a user to hook the pull-tab opener through the pull-tab opening and apply sufficient pulling force without utilizing a pinch force to at the lines of weakness and create an opening, further wherein the product is oriented proximate to the opening to facilitate easy removal of the product.

*Independent claim 36 recites:*

A method of providing an enhanced opening system for a sealed container comprising:

providing a bag having lines of weakness and a pull-tab opener for opening the sealed container, the pull-tab opener secured to the bag proximate to the lines of weakness, the pull-tab opener having a pull-tab opening integral therewith, wherein the pull-tab opening is a hole large enough to be hooked with hooking means and pulled on in order to open the sealed container.

In all three independent claims 11, 15, and 36 there are main two steps been claimed:

Step A: of providing a bag having lines of weakness and a pull-tab opener secured to the bag.

Step B: of providing suitable markings to convey instructions to pull on the pull-tab opener to access contents within the sealed container.

**B. The rejection of claims 11, 15, and 36 under 35 U.S.C. 103(a) is proper and should be affirmed.**

Appellant argues that the applied references teach away from the particular problem solved by the combination of elements that define the invention. The examiner maintains that broadly considering the claimed language clearly been covered and shown in the applied references as disclosed above in the rejection. The main reference of Wade discloses the step of providing a bag having lines of weakness and a pull-tab opener secured to the bag (Fig. 19-20C; via pull tab 410 and broken lines 412) and the secondary reference of Chalin discloses the step of providing suitable markings to convey instructions to pull on the pull-tab opener to access contents within the sealed container (Figs. 26 and 27; via the printed words of “tear down to vent”). *Note that both applied references related to a package, which make it obvious to modify one in view of the other as both related to the same art of packaging.*

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner likes to draw the attention to column 3, lines 39-41 and Figs.

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26 and 27 as it is clearly shown such prints in the cover for the purpose of simplifying and make it easy to handle the package during the opening step.

Appellant argues that Wade's hole 420 is not a hole designed to be hooked with hooking means as suggested by the examiner. The examiner maintains that such hole 420 been designed to be hooked with hooking means, see for example column 13, lines 19-24, which refers to the use of hole 420 to be hooked via fingers to open the package.

Appellant further argues that a pinching force is not required in appellant's invention. The examiner is noting that such claimed "without utilizing a pinch force" is not positively cited as a step on the method claims. However, such limitations clearly could be seen in Wade Figs. 20A-20D via pulling down the tap via pulling force no pinching force disclosed.

#### (11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Sameh H. Tawfik

SAMEH H. TAWFIK  
PRIMARY EXAMINER

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